IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 6436 of 2006(N)

CMA.377/2000 of ADDL. DISTRICT COURT, THODUPUZHA

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PETITIONER:

JOSEPH PAUL, MANIKUTTIYIL HOUSE,
NERIAMANGALAM, KOTHAMANGALAM.,

BY ADV. SRI.K.S.ROCKEY

RESPONDENTS:

THE DIVISIONAL FOREST OFFICER,
MUNNAR.

BY SPL. GOVT. PLEADER SHRI. M.P.PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT. P1: TRUE COPY OF JUDGMENT DT. 26.3.1997 IN O.P. NO; 5558/97 OF THIS HONOURABLE COURT

EXT.P2: -DO- OF ORDER NO: M1-7462/96 DT. 11.9.2000

EXT.P3: -DO- OF JUDGMENT DT. 17. 11.9.2000

jj /TRUE COPY/

P.S. TO JUDGE

M.N.KRISHNAN, J

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W.P.(C) No.6436 OF 2006

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Dated this the 15th day of October 2007

JUDGMENT

This writ petition is filed against the judgment of the Addl.District Court, Thodupuzha in C.M.A.No.377 of 2000. It was an appeal filed under Section 61D of the Kerala Forest Act. A perusal of paragraph 3 of the judgment would reveal that the counsel for the appellant did not turn up though the case was posted for hearing finally on 10.8.2004. The learned District Judge held that since the case is included in the target, he is disposing it of. Order 41 Rule 18 C.P.C. contemplates a situation where the appellant and his counsel are absent, the only way for the court is to dismiss the matter for default and it cannot dismiss the case on merits without hearing the appellant.

Therefore, the order under challenge suffers from serious infirmity. Hence it is set aside and the matter is remitted back to the Addl.District Court, Thodupuzha for fresh consideration, making it very clear that the matter can be heard and disposed of after hearing both sides. If the appellant fails to appear and argue the case, the court may dismiss the

appeal for default, but not on merits. Parties are directed to appear before the court below on 14.11.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-